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**METZ LEWIS**  
ATTORNEYS AT LAW

**FACSIMILE COVER SHEET**

Date: April 15, 2003

PLEASE DELIVER THE FOLLOWING FACSIMILE TRANSMISSION TO:

Name: L. Bond  
Company: USPTO - Petitions Div.  
Fax No.: (703) 308-6916  
From: Patty Boss  
Re: Serial No. 09/842,963

**FAX RECEIVED**

**APR 15 2003**

**PETITIONS OFFICE**

Pages: 9 (including cover sheet)

Message:

**Ms. Bond:**

Pursuant to our discussion earlier today, I am enclosing copies of the 2/5/02 and 9/10/02 Office Actions which you indicated are missing from your files.

**Patty Boss**

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IF YOU HAVE ANY PROBLEM RECEIVING THIS TRANSMISSION, PLEASE CONTACT  
Patty Boss at 412.918.1107

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET N .	CONFIRMATION NO.
09/842,963	04/27/2001	Mark J. Weiser	01-016	8648

7590 02/05/2002  
GEORGE C. ATWELL  
421 NORTH MAIN STREET  
P.O. BOX 829  
BUTLER, PA 16003

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 30 month(s) or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-23 are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

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PETITIONS OFFICE

Receipt is acknowledged of IDS, Correction, Extension, Declaration, and amendment of respectively.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, drawn to Devices, classified in class 383, subclass 1.
- II. Claims 17-22, drawn to methods, classified in class 424, subclass 409.
- III. Claim 23, drawn to Busier Packs, classified in class 206, subclass 223.

The inventions are distinct, each from the other because:

Inventions Groups I, III and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the devices and pack are patentably distinct and independent inventions from the methods of Group II, as other products such as heating vaporization may be used to accomplish the methods.

The Devices are independent and distinct from the pack of Group III, as other methods may be used with the devices, which may be other wise packaged.

This application contains claims directed to the following patentably distinct species of the claimed invention: species of cover: Fabric, Plastic, Latex, envelope.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 7-14 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

This application contains claims directed to the following patentably distinct species of the claimed invention: species of form: granular, Powder, Fibrous.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-8, 12-16 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Art Unit: 1616

Because these inventions are distinct for the reasons given above and the search required for Group I, II or III is not required for Group III, II or I, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

A telephone call was made to attorney George Atwell on 1/23/2002 to request an oral election to the above restriction requirement, but did not result in an election being made.

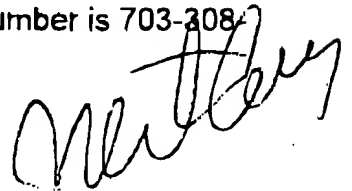
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 703-308-2412. The examiner can normally be reached on Tuesday to Friday from 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4242. The fax phone number for the organization where this application or proceeding is assigned is 703-308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Levy/LR

January 25, 2002

  
NEIL S. LEVY  
PRIMARY EXAMINER



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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 09/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.





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Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER
	3

DATE MAILED:

**NOTICE OF ABANDONMENT**

This application is abandoned in view of:

1. ☒ Applicant's failure to respond to the Office letter, mailed 2/5/02
2. ☐ Applicant's letter of express abandonment which is in compliance with 37 C.F.R. 1.138.
3. ☐ Applicant's failure to timely file the response received \_\_\_\_\_ within the period set in the Office letter.
4. ☐ Applicant's failure to pay the required issue fee within the statutory period of 3 months from the mailing date of \_\_\_\_\_ of the Notice of Allowance.
  - ☐ The issue fee was received on \_\_\_\_\_
  - ☐ The issue fee has not been received in Allowed Files Branch as of \_\_\_\_\_

In accordance with 35 U.S.C. 151, and under the provisions of 37 C.F.R. 1.316(b), applicant(s) may petition the Commissioner to accept the delayed payment of the issue fee if the delay in payment was unavoidable. The petition must be accompanied by the issue fee, unless it has been previously submitted, in the amount specified by 37 C.F.R. 1.17(l), and a verified showing as to the causes of the delay.

If applicant(s) never received the Notice of Allowance, a petition for a new Notice of Allowance and withdrawal of the holding of abandonment may be appropriate in view of *Delgar Inc. v. Schuyler*, 172 U.S.P.Q. 513.

5. ☐ Applicant's failure to timely correct the drawings and/or submit new or substitute formal drawings by \_\_\_\_\_ as required in the last Office action.
  - ☐ The corrected and/or substitute drawings were received on \_\_\_\_\_
6. ☐ The reason(s) below.

NEIL S. LEVY  
PRIMARY EXAMINER

*collected by Thomas*  
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ID: 4129181199

APR-15-03 19:00 FROM: METZ LEWIS LLC